IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 8584 OF 2005

Rajesh Ghisusingh Marwdi Raja Rajput ..Petitioner.

V/s

The State of Maharashtra ..Respondent.

Mr. Kuldeep Patil with Deepak Girame for the petitioner.

Mr. S.V. Gajre, APP for the State.

CORAM: V.M. KANADE, J.

DATE: 13th February, 2006

P.C.:

1. Heard the learned Counsel for the petitioner and the learned APP for the State.

2. The petitioner was arrested on 18/8/2005 in connection with the offence registered vide C.R. No.456 of 2005 at Swargate Police Station, which had taken place on 4/6/2005 where it is alleged that the applicant along with others had assaulted the father of the complainant with swords and with other weapons and as a result of the said assault, the father of the complainant died. It is submitted by the learned Counsel appearing on behalf of the applicant that the name of the present applicant has not been mentioned in the FIR. He has submitted that out of the eye

witnesses whose statements ere recorded on 4/6/2005, none of the eye witnesses except one person viz. Prakash Janardhan Gavali has taken the name of the present applicant. He has invited my attention to the said statements and submitted that even the said witness Prakash Gavali states that the applicant had assaulted the complainant and others by giving fist blows and kick blows. He submitted that, therefore, the presence of the applicant at the scene of offence was doubtful and even otherwise no overtacts have been attributed by the eye witness who has taken the name of the applicant. The learned Counsel further submitted that the complainant Vikas Gavali has, in his supplementary statement, mentioned that the applicant was also present alongwith others.

3. In the present case, the charge-sheet has been filed. Though the complaint was lodged on 4/6/2005, subsequent statement of the complainant was recorded after almost 10 days and in the supplementary statement he has stated that the applicant was present at the scene of offence. The other eye witness Prakash Gavali also states that the applicant was present at the site and the only allegation against him is that he had given fist blows and kick blows. Looking to the nature of this evidence, in my view,

the applicant is entitled to be released on bail. Apart from the fact that the applicant's name is not mentioned in the FIR, even other eye witnesses do not mention his name. There is, therefore, inconsistency in the statements of Prakash Gavali and other eye witnesses. The applicant will have to be given a benefit of this inconsistency and, therefore, the applicant is entitled to be released on bail.

4. The applicant be released on bail in the sum of Rs 5,000/- with one or two sureties in the like amount. Applicant to report to Swargate Police Station, Pune twice in a month.

V.M. KANADE, J.